IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

CRP.No. 813 of 2007()

AGAINST THE ORDER DATED 02/07/2007 IN EP 649/06 IN OS.485/2002 of MUNSIFF COURT, CHALAKUDY

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REVN. PETITIONER: DECREE HOLDER

VELAYUDHAN NAIR,
S/O.KUNNAMPILLY KUNJAMMA,
MATTATHOOR DESOM, MATTATHOOR VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.K.S.BHARATHAN

RESPONDENTS: JUDGMENT DEBTOR

V.P.DEVASSY, VALAPPAN VEETTIL,
VIJAYARAGHAVAPURAM DESOM,
WEST CHALAKUDY VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.SHEEJO CHACKO
SRI.SHEEJO CHACKO
SRI.M.N.MANOJ

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

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C.R.P.No.813 of 2007

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Dated this the 11th day of September, 2007.

ORDER

This Civil Revision Petition is preferred against the order of the Munsiff's Court, Chalakkudy in E.P.No.649 of 2006 whereby, the E.P. itself was dismissed. The case of the revision petitioner is that he had obtained a decree and moved an application for attachment and sale of ½ share of the property belonging to the judgment debtor comprised in Sy.No.463/1 of Perambra Village. At the time of filing the E.P. itself that property had been transferred in favour of third person and therefore, execution petition cannot be entertained and dismissed the same.

2. Caveator, namely, respondent entered appearance. I am aware that it is always within the relm of the decree holder to contend for the position that any transfer made is with the intention to delay and defeat the creditors, which can be challenged under Section 53 of the T.P. Act. It is true that the

decree holder came to know about the transfer only on filing of the counter by the caveator before the court below. In a case where the question of fraudulent transfer is involved, it requires pleading and evidence. The present E.P. does not contain such a pleading.

3. Therefore, I dispose of the Civil Revision Petition reserving the right of the decree holder to file a fresh Execution Petition challenging the transaction effected by the respondent as hit by Section 53 of the T.P. Act. Needless to say that the respondent would be entitled to raise all the contentions which he wants when such an Execution Petition is filed.

M.N.Krishnan,
Judge.

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